



**BILLING CODE – 4510-FP-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

Comment Request for Information Collection for Form ETA-9035, Labor Condition Application for Nonimmigrant Workers (OMB Control Number 1205-0310), Revision of a Currently Approved Collection.

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL or Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight in the H-1B, H-1B1, and E-3 nonimmigrant visa application processes, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the extension of the approval for the information collection, Office of Management and Budget (OMB) Control Number 1205-0310, containing Form ETA-9035 – Labor Condition Application for Nonimmigrant

Workers; Form ETA-9035E – Labor Condition Application for Nonimmigrants Workers (electronic version); Form ETA-9035CP – General Instructions for the 9035 & 9035E; Wage and Hour Division (WHD) Form WH-4 – Nonimmigrant Worker Information Form; and other H-1B related information collection and retention requirements, which expire May 31, 2018. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

The Form ETA-9035/9035E must be used by employers seeking to employ a foreign worker in a specialty occupation or as a fashion model of distinguished merit and ability under the H-1B, H-1B1, and E-3 nonimmigrant visa classifications. The Form ETA-9035/9035E must be certified by the DOL before the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) may approve a petition authorizing admission of a foreign worker under the visa classification. The Form WH-4 is used to request that DOL's Wage and Hour Division initiate an investigation related to alleged violations of H-1B, H-1B1 and E-3 program requirements.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit written comments to William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box# 12-200, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202-513-7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above

via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-513-7395. E-mail: [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov) subject line: ETA-9035. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The information collection is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t), and 1184(c)). The Department and the Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I, and 8 CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the United States (U.S.) to perform work in a specialty occupation or as a fashion model unless the U.S. employer makes certain attestations to the Secretary of Labor (Secretary). Those attestations include that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the employer will offer a wage that is at least the higher of the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has provided notice of the filing of the LCA. In addition, further attestations are generally required for H-1B dependent employers and willful violators. The current ICR expires

May 31, 2018. The Department is seeking revisions to the Form 9035/9035E and Form 9035CP Instructions in order to streamline parts of the current information collection to assist the regulated community with form completion; provide greater clarity of existing employer obligations under the programs; and promote greater program transparency by collecting additional information on the employment of temporary nonimmigrant workers by U.S. employers. The Department is also seeking revisions to the Form WH-4 in order to provide the form in a LIVECYCLE document to improve accessibility and compliance with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998 SEC. 508; assist the regulated community with form completion; and collect additional information to facilitate complainant communication for the enforcement of Forms 9035 and 9035E.

## **II. Review Focus**

DOL is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond,

including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### **III. Current Actions:**

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to labor condition applications that are used in the H-1B, H-1B1, and E-3 visa programs and allow employers to bring foreign labor to the U.S. on a temporary basis.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0310. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2018. The DOL seeks to extend PRA authorization for this revised information collection for three (3) more years.

In the past the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal governments, or the Federal government. The Secretary uses the collected information to

determine if employers are meeting their statutory and regulatory obligations.

A. General

Title: Labor Condition Application for H-1B, H-1B1, and E-3 Non-immigrants.

Type of Review: Revision.

OMB Number: 1205-0310

B. ETA Forms and Information Collections

Title(s): Labor Condition Application for Nonimmigrant Workers, and General Instructions for the 9035 & 9035E.

Affected Public: Private Sector (businesses or other for-profits and not-for-profit institutions) and State, Local, and Tribal Governments.

Form(s): ETA forms ETA-9035, ETA-9035E, and ETA-9035CP

Total Annual Respondents: 569,260

Annual Frequency: On occasion

Total Annual Responses: One per respondent

Average Time per Response: 1.25 hours for forms ETA-9035/9035E, Appendix A (0.33 hour), and ETA-9035CP.

For other steps conducted:

- Documentation of Corporate Identity – 1 hour
- H-1B Employer's Only- Determination of H-1B Dependency - 0.5 hour
- H-1B Employer's Only- Determination of H-1B Dependency-Document Retention - 0.05 hour
- List of Exempt H-1B Employees in Public Access File - 0.25 hour

- Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite - 0.166 hour (x5 times annually)
- Offers of Employment to Displaced U.S. Workers - 0.33 hour
- Documentation of U.S. Worker Recruitment - 0.33 hour
- Documentation of Fringe Benefits - 1.5 hour
- Documentation of Fringe Benefits for Multinational Employers - 0.5 hour
- Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants - 2.5 hour

Estimated Total Annual Burden Hours: 910,844

Total Annual Burden Cost for Respondents: \$53,171,155

#### C. WHD Form

Title(s): Nonimmigrant Worker Information Form.

Affected Public: Individuals or Households.

Form(s): WH-4

Total Annual Respondents: 225

Annual Frequency: Once

Total Annual Responses: 225

Average Time per Response: 0.333 hours

Estimated Total Annual Burden Hours: 75

Total Annual Burden Cost for Respondents: \$4330.20

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a

matter of public record. Commenters are encouraged not to disclose private and/or sensitive information (e.g., Social Security Numbers or confidential business information).

**Byron Zuidema,**

Deputy Assistant Secretary for Employment and Training Administration, Department of Labor.

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